

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FREDERIK A. SIEMONSEN
and DONALD NELSON

Appeal No. 1998-1349
Application No. 08/455,859¹

ON BRIEF

Before MCQUADE, NASE and CRAWFORD, Administrative Patent Judges.
CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 2 and 4. Claims 3 and 5 through 11 have been withdrawn from consideration.

¹ Application for patent filed May 31, 1995.

The appellants' invention relates to a can end. An understanding of the invention can be derived from a reading of exemplary claim 1, which appears in the appendix to the appellants' brief.

The prior art

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Young	1,100,005	Jun. 16, 1914
Kraska	4,093,102	Jun. 6, 1978

The rejections

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Kraska.

Claims 2 and 4 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Young.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 17, mailed August 26, 1997) for the examiner's complete reasoning in support of the rejections, and to the appellants'

brief (Paper No. 16, filed June 30, 1997) and reply brief (Paper No. 18, filed September 24, 1997) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

Both rejections are made under 35 U.S.C. § 102(b). We initially note that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v.

Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

In explaining the rejection of claim 1 under 35 U.S.C. § 102(b), as anticipated by Kraska, the examiner states:

In Fig. 2 of Kraska, 22 is the reinforcing rim, 16 is the countersink base, 28 is the countersink wall, the area to the right of lead line 14 is the flange and the area to the left of lead line 14 is the curl.
[examiner's answer at page 3]

Appellants argue that in Kraska at least two beads are mandated for that device to work, which leads away from the present invention. As to the question of leading away or "teaching away" our reviewing court in In re Gurley, 27 F.3d 551, 553, 31 USPQ2d 1130, 1331 (Fed. Cir. 1994) stated:

A reference may be said to teach away when a person of ordinary skill, upon [examining] the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.

In the instant case, we agree with the examiner that the bead 22 is a reinforcing rim and that the bead 16 is a countersink base as broadly claimed and as such the provision of beads 16 and 22 does not lead a person of ordinary skill in the art away from the path taken by the appellants.

Appellants also argue that the curl disclosed in Kraska does not have an inward extending portion and a peripheral edge. We do not agree. In our view, the curl disclosed in Kraska does have an inward extending portion to at least some extent and certainly includes a peripheral edge.

Appellants also argue that Kraska mandates that the walls 20 and 30 have small acute angles and the wall 28 not have an angle more than four degrees with respect to the vertical plane and that these teachings teach away from the claimed countersink base and cover flange. It is our opinion that the provision of acute angles for walls 20 and 30 and the disclosure of wall 28 not having a angle more than four degrees does not lead a person skilled in the art away from the claimed invention because claim 1 does not recite any limitations for the angles of the walls but merely recites "a cover flange" and "a countersink."

Lastly, appellants argue that the present invention produces a new product which results in cost saving by reducing the diameter of the can end, and by forming the curl outwardly and thereby thinning the material only in the curl and not in the entire can end.

Appellants' specification discloses that the curl is formed during the upstroke of a punch when sloping wall 61 traps the outer edge 45 of the can end and forces the metal from transitional outer wall 17 to stretch outward.

(Specification at page 12). It is this stretching of the metal which causes a thinning of the metal at the curl and thereby leads to savings of metal. However, the broad language of claim 1, i.e., "curl is formed by moving material outwardly between an outer edge of the cover flange and the peripheral edge" does not mention stretching of the metal. And in our view moving metal outwardly would not mandate that the metal is stretched. Therefore, while the specification may disclose a curl formed of thinned metal, when the language of claim 1 is given its broadest reasonable interpretation, it does not recite a curl of thinned or stretched metal.

We turn next to the examiner's rejection of claims 2 and 4 under 35 U.S.C. § 102(b) as being anticipated by Young. In the view of the examiner, Young anticipates the claimed invention of claims 2 and 4 because:

In Fig. 3 of Young, 4 is the central panel, the planar wall is shown at lead line 3, 8 is the flange and 7 is the cover hook, as stated in claim 2. With respect to claim 4, the annular portion is shown at lead line 3 and 7 is the curl. [examiner's answer at page 4].

Appellants argue that Young describes the in-turning or curling of the outer edge of the flange 5 as shown as 7 in Figure 3 and thus Young leads away from the unique product of the present invention in which the outer curl is stretched outwardly during forming to thin the curl.

Claim 2 recites:

the cover hook and the peripheral edge being formed in a single station by cutting the peripheral edge, moving the peripheral edge downward and inward and forming a transitional wall between the flange and the peripheral edge, and moving the peripheral edge upward and extending the transitional wall outward for forming the cover hook.

Claim 2 does not recite that the cover hook is formed of stretched metal. As with the preceding rejection, it is our view that the broad language of claim 2 does not limit the cover hook or curl to one formed from stretched metal. Therefore, we will sustain the examiner's rejection.

The decision of the examiner is affirmed.

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

Affirmed

JOHN P. MCQUADE)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JEFFREY V. NASE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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